



International Foundation
for Electoral Systems

IFES FEEDBACK ON DEPARTMENT OF JUSTICE ADVANCED NOTICE OF PROPOSED RULEMAKING (ANPRM) ON FOREIGN AGENTS REGISTRATION ACT (FARA)

February 11, 2022

Jennifer Kennedy Gellie
Chief, FARA Unit
Counterintelligence and Export Control Section
National Security Division
U.S. Department of Justice, 175 N Street NE
Constitution Square, Building 3, Room 1.100
Washington, DC 20002

Dear Chief Gellie,

The following is in response to the Advanced Notice of Public Rulemaking (ANPRM) issued by the National Security Division, Department of Justice (DOJ) on December 13, 2021, on the “Clarification and Modernization of Foreign Agents Registration Act (FARA), Docket No. NSD 102.

Background: [International Foundation for Electoral Systems](https://www.ifes.org/) (IFES) advances democracy for a better future. We collaborate with civil society, public institutions and the private sector to build resilient democracies that deliver for everyone. As a global leader in the promotion and protection of democracy, our technical assistance and applied research develops trusted electoral bodies capable of conducting credible elections; effective and accountable governing institutions; civic and political processes in which all people can safely and equally participate; and innovative ways in which technology and data can positively serve elections and democracy. Since 1987, IFES has worked in more than 145 countries, from developing to mature democracies. IFES is a global, nonpartisan nonprofit organization based in Arlington, Virginia, and registered as a 501(c)(3).

We respectfully submit that the DOJ should amend its regulations in a manner that better targets the Act. As a nonprofit, IFES operates as neutral actor that is invited by countries to provide technical assistance and applied research to its election management bodies, often at times in countries that are going through significant democratic change. For safety and security reasons, we must maintain this neutrality and independence. Failing to do so could jeopardize not only the work we do, but place others at unnecessary risk. Being labeled as a foreign agent under FARA would put our neutrality and independence in jeopardy.

Response: Please find below IFES’ comments to the first two questions posed in the ANPRM.

Question 1: Should the Department incorporate into its regulations some or all of its guidance addressing the scope of agency, which is currently published as part of the FARA Unit's FAQs on its website? See <https://www.justice.gov/nsd-fara/page/file/1279836/download>. If so, which aspects of

that guidance should be incorporated? Should any additional guidance currently included in the FAQs, or any other guidance, be incorporated into the regulations?

IFES Response: The definition of agency is confusing and vague. The DOJ should take this opportunity to incorporate the current guidance addressing scope of agency into the regulations. A clearer definition for nonprofits and others to follow as defined in the Restatement of Agency.

Question 2: Should the Department issue new regulations to clarify the meaning of the term “political consultant,” including, for example, by providing that this term is generally limited to those who conduct “political activities,” as defined in 22 U.S.C. 611(o)?

IFES Response: We agree the DOJ should issue new regulations to clarify the meaning of the terms “political consultant” and “political activity”. The clarification could include commercial and non-commercial actors, including nonprofits, civil society organizations and individuals.

Thank you for the opportunity to submit feedback on the Foreign Agents Registration Act (FARA). We appreciate your consideration of our requests and would welcome continued consultation as the ANRPM undergoes further review and revision.

Comments submitted to Department of Justice on February 11, 2022.